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November 9, 2000

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BY HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
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Re: In the Matter of Applications for Consent to the Transfer of Control of
Licenses and Section 214 Authorizations from Ameritech Corporation,
Transferor, to SBC Communications Inc., Transferee, CC Docket No. 98-
141, ASD File No. 99-49

Dear Ms. Salas:

Please find enclosed for filing an original and fourteen copies of the Reply Comments of
SBC Communications Inc. Opposing the Petition for Reconsideration of the Competitive
Telecommunications Association in the above captioned proceeding.

Please date-stamp and return the extra copy provided to the person delivering this
package.

Sincerely,



Rachel E. Barkow

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Applications for Consent to the Transfer of
Control of Licenses and Section 214
Authorizations from Ameritech Corporation,
Transferor, to SBC Communications Inc.,
Transferee

CC Docket No. 98-141
ASD File No. 99-49

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.
OPPOSING THE PETITION FOR RECONSIDERATION OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

None of the parties filing comments in support of the Competitive Telecommunications Association ("CompTel") raises any new factual or legal arguments to support CompTel's request for reconsideration. Like CompTel's unsubstantiated motion, the comments "simply reiterate[] arguments previously considered and rejected" by the Commission. Memorandum Opinion and Order, *EZ Sacramento, Inc.*, Nos. 98020370 & 98090215, DA 00-2143, 2000 FCC LEXIS 5047, ¶ 2 (rel. Sept. 21, 2000) ("*EZ Sacramento Order*"). Thus, under the Commission's established rules for considering petitions for reconsideration, CompTel's petition should be denied. *Id.*, Memorandum Opinion and Order, *Applications of Religious Broad. Network et al.*, 3 FCC Rcd 6216, 6216, ¶ 2 (1988) ("It is well-settled that reconsideration will not be granted merely to reargue matters previously considered and resolved.").

The commenters would have the Commission reconsider its *Modification Order*,¹ not because of a material error or omission or based on additional facts not known or existing until after the order was issued, *EZ Sacramento Order* ¶ 2, but simply because they want to impede competition. The *Modification Order* and the Voluntary Conditions, attached as Appendix A to the Modification Order, “ensure that competitors have the ability to compete effectively in the advanced services marketplace.” *Modification Order* ¶ 1. Consumers and competitors alike will benefit from the rapid deployment of advanced services and the increased choices the Voluntary Conditions bring. Indeed, they already are reaping the rewards. SBC has been relying on the Commission’s *Modification Order* to invest in millions of dollars of equipment and to make ADSL service available to countless customers who previously lacked this option. Under the Commission’s well-settled rules for reconsideration, these reliance interests cannot be upset based on nothing more than the restatement of arguments considered and rejected. Yet that is all CompTel and its supporting commenters have offered. Accordingly, CompTel’s petition for reconsideration must be denied.

¹ Second Memorandum Opinion and Order, *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, CC Docket No. 98-141, FCC 00-336 (rel. Sept. 8, 2000) (“*Modification Order*”).

I. Commenters Offer No Basis for the Commission To Reconsider Its Decision Not To Declare the Broadband Service a UNE

Although WorldCom,² Advanced TelCom Group,³ IP Communications,⁴ AT&T,⁵ Allegiance,⁶ and Focal⁷ all support CompTel's argument that the Commission should declare the Broadband Service an unbundled network element ("UNE"), these commenters simply rehash the same tired arguments that the Commission has already considered – and rejected. These commenters fail to submit a single piece of new evidence in support of this request, nor do they show that the Commission's initial determination was in error.

WorldCom, for example, simply repeats CompTel's claim that a Commission determination would be "valuable to state commissions." WorldCom Comments at 2. As SBC pointed out in its opposition, this argument is hardly new to the Commission. Opposition of SBC Communications Inc. to the Petition for Reconsideration of the Competitive Telecommunications Association at 4 (FCC filed Nov. 2, 2000) ("SBC Opposition"). WorldCom goes even further than CompTel, however, and asks the Commission to determine

² WorldCom Comments in Support of the Petition for Reconsideration of the Competitive Telecommunications Association at 2-5 (FCC filed Nov. 2, 2000) ("WorldCom Comments").

³ Comments of Advanced TelCom Group in Support of Petition for Reconsideration of the Competitive Telecommunications Association at 2-6 (FCC filed Nov. 2, 2000) ("ATG Comments").

⁴ Comments of IP Communications Corporation in Response to CompTel's Petition for Reconsideration of the Modification of the SBC/Ameritech Merger Conditions at 3-5 (FCC filed Nov. 2, 2000) ("IP Comments").

⁵ AT&T Comments on CompTel Petition for Reconsideration and/or Clarification at 1 (FCC filed Nov. 2, 2000) ("AT&T Comments").

⁶ Comments of Allegiance Telecom, Inc. at 1-6 (FCC filed Nov. 2, 2000) ("Allegiance Comments").

⁷ Comments of Focal Communications Corporation at 2-5 (FCC filed Nov. 2, 2000) ("Focal Comments").

not only whether sections 251 and 252 apply, but also whether SBC's Broadband Service complies with them. This proceeding, however, is limited to the requests for reconsideration in CompTel's petition. WorldCom failed to file a timely petition for reconsideration of its own, and it cannot now use its comments to bypass that deadline.

In any event, WorldCom's claim is meritless. WorldCom relies on its own unsubstantiated ex partes to "call into question whether SBC has 'committed to providing all carriers nondiscriminatory access to its Broadband Offering and to making available all technically feasible features, functions, and capabilities'" and to support its claim that a determination under sections 251 and 252 is necessary. WorldCom Comments at 4-5. First, WorldCom points to an August 18, 2000 ex parte to the Commission in which WorldCom argued for action by the Commission that would facilitate line splitting over the UNE-P and in which WorldCom pointed out the number of line-shared loops in California. WorldCom Comments at 3 & Attach. A. Second, WorldCom quotes extensively from comments it filed with the California Public Utilities Commission in which it highlighted the same information regarding the number of line-shared loops in California. *Id.* at 3-4. Neither of these ex partes, however, casts doubt on SBC's compliance with the Act or the Merger Conditions. SBC is fully complying with the *Line Sharing Order*.⁸ SBC makes line shared loops available throughout its region, including California. It is not within SBC's control whether carriers take advantage of this offering.

Moreover, although WorldCom claims that consumers and small businesses will benefit if the Commission reviews SBC's Broadband Offering under sections 251 and 252, the

⁸ Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

Commission concluded in the *Modification Order* that SBC's Voluntary Conditions, as written, were in the public interest and would "affirmatively and identifiably promote the rapid deployment of advanced services in a pro-competitive manner, thereby serving the goals of section 706." *Modification Order* ¶ 23. The Commission made this conclusion under the terms of the Broadband Service as offered – that is, with the Broadband Service being provided as an end-to-end wholesale service on a shared rather than exclusive basis, offered on nondiscriminatory terms and conditions, and priced in accordance with the methodology for UNEs. Thus, the Commission concluded that SBC's Broadband Service was in the public interest even without deciding whether it should be a UNE.

Although AT&T claims that the term "wholesale arrangement" is "confusing" and that the Commission should "clarify" that it is not a service, AT&T Comments at 1, SBC's voluntary commitments are quite clear that the Broadband *Service* Offering is exactly that: a service. And the Commission's current rules are clear that the Broadband Service and elements that comprise this service (such as line cards and OCDs) do not need to be unbundled. Thus, the Commission would be doing far more than "clarify[ing]" if it were to conclude that the Broadband Service is instead subject to unbundling under the Act. *Id.* at 2; *see also* Focal Comments at 2 (asking the Commission to "clarify" that the Broadband Offering is a UNE); ATG Comments at 3 (arguing that the network elements that comprise the Broadband Service have been defined as UNEs). Similarly, although Allegiance claims that the offering should not be characterized as "voluntary," Allegiance Comments at 2, SBC's commitments were, in fact, voluntary.⁹ As the

⁹ That SBC described its unique and unprecedented proposed offering as a UNE for a brief period of time (and before formally offered) does not change the character of its ultimate offering. *See* Allegiance Comments at 4; ATG Comments at 4-5. SBC was free to modify its voluntary commitments, and the Commission approved the commitments as written – viz, as offering a new wholesale service. Moreover, it is not for SBC to decide whether something is a

Commission concluded, they “create *additional* choices for” CLECs, choices not demanded by the current rules. *Modification Order* ¶ 29 (emphasis added). The commenters therefore ask the Commission to decree, in the context of a limited adjudication interpreting the Merger Conditions, new UNEs and to rewrite its existing rules. As even IP acknowledges, it is “understandable why the FCC might not wish [to] develop what could be seen as new unbundling rules in a merger modification request.” IP Comments at 3. Indeed, it is not merely understandable, but undeniable that the Commission’s task in this proceeding was far more circumscribed. The Commission was charged with evaluating whether SBC’s request, as submitted with its Voluntary Commitments, was in the public interest. The Commission concluded that it was.

Thus, there is no basis for the Commission to go further and create new UNEs in this Merger Condition interpretation proceeding. None of the commenters attempts to argue that the Broadband Service Offering satisfies the necessary and impair test of section 251(d)(2). Moreover, there is no record to do so. And despite IP’s suggestion that the Broadband Service is

UNE, instead, it is for the Commission to decide after conducting the necessary and impair test. Similarly, although Allegiance suggests that SBC has changed its Broadband Offering, SBC fully complies with the Voluntary Conditions. The Voluntary Conditions did not specify that the Broadband Service would be offered in an interconnection agreement. Allegiance cites paragraph 30 of the *Modification Order*, see Allegiance Comments at 5 n.12, to support this proposition, but paragraph 30 was merely citing an earlier Accessible Letter by SBC. See *Modification Order* ¶ 30 n.82 (citing SBC Accessible Letter from May 24, 2000). In that Letter, SBC made no representation regarding how the Broadband Service would be offered. See Letter from Marian Dyer, SBC, to Magalie Roman Salas, FCC (May 25, 2000) (attaching SBC Accessible Letter of May 24, 2000). Rather, SBC merely offered the “general terms for this offering . . . in the attached Contract Language.” SBC Accessible Letter at 1. In any event, SBC has made clear that it will provide the Broadband Service as an amendment to an interconnection agreement if a CLEC prefers that option. See Letter from Paul K. Mancini, SBC, to Jonathan Lee, CompTel, at 3 (Oct. 13, 2000). SBC’s offer of the UBR Quality of Service (“QoS”) is also consistent with the Voluntary Conditions. The Voluntary Conditions make clear that SBC has six months from the date of the Commission’s *Modification Order* to start offering CBR. See

already a UNE, IP Comments at 7-8, it is not. On the contrary, although IP claims that the “Commission has already determined that the general rule is in favor of unbundling” regarding packet switching, *id.* at 7, the Commission reached the opposite conclusion in the *UNE Remand Order*.¹⁰ The Commission held in the *UNE Remand Order* that packet switching should not be unbundled except in the “limited” circumstance where the incumbent LEC has collocated its DSLAM in a remote terminal and the requesting carrier is unable to install its DSLAM in the RT or obtain spare copper loops to provide advanced services. 15 FCC Rcd at 3838-39, ¶ 313. The Commission concluded that extending UNE regulation to packet switching would stifle the incentives of carriers to use such technology, in flat contradiction to section 706. *See id.* at 3840, ¶ 316.

Commenters have offered no reason for the Commission to second-guess that judgment and now take a position on whether the Broadband Service is subject to sections 251 or 252. *See Modification Order* ¶ 30 (taking no position on whether the Broadband Offering is subject to sections 251-252 or any other provision of the Act). ATG’s suggestion that the Voluntary Commitments present “a problem, rather than an opportunity,” ATG Comments at 2, is completely at odds with the fact that the Voluntary Commitments provide options and opportunities for CLECs that are not required under current rules. They create “*additional* choices” for CLECs. *Modification Order* ¶ 29 (emphasis added). “SBC’s proposal does not eliminate any options currently available to competitive LECs under [the Commission’s] rules.” *Id.* ¶ 35. And those new opportunities “will speed the deployment of ADSL service availability

Voluntary Conditions ¶ 4(a). This offering, moreover, is subject to the industry collaborative sessions spelled out in paragraph 8 of the Voluntary Conditions. *See id.* ¶ 8.

¹⁰ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”).

to 77 million consumers within three years.” *Id.* ¶ 23. They also “pave[] the way for . . . other carriers to compete for those consumers.” *Id.* ¶ 28. Commenters have provided no basis for stripping consumers and competitors of these benefits.

II. Commenters Offer No Additional Support for CompTel’s Request for New Line Splitting Rules

The Commission properly refused requests to modify the Voluntary Conditions to eliminate the requirement that users of the Voice/Data Service collocate in the SBC ILEC’s central office. *Id.* ¶ 51. Commenters have provided no new arguments that call that decision into question.

Although AT&T has argued throughout this proceeding that such a modification is necessary,¹¹ AT&T now claims that there is “no need for a separate request for clarification on this issue,” because by “clarifying” that the Broadband Service is a UNE, “the Commission will also facilitate access to line splitting capabilities at the remote terminal.” AT&T Comments at 2. Specifically, AT&T argues that “the Commission should clarify that it will not permit SBC to operate any part of its Project Pronto architecture – including the line-splitting functionality contained in the line card – in a manner that discriminates against any CLEC.” *Id.* at 3. Again, however, these are not mere requests for clarification but a wholesale re-writing of the Commission’s rules. Moreover, AT&T is simply recasting the same argument it has made throughout this proceeding, namely that carriers should not be required to collocate to obtain the Voice/Data Service, and that the Commission has already rejected. *See, e.g.*, AT&T Aug. 23 Ex Parte at 4.

¹¹ *See, e.g.*, Letter from James L. Casserly, Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., Counsel for AT&T Corp., to Magalie Roman Salas, FCC, at 4 (Aug. 23, 2000) (“AT&T Aug. 23 Ex Parte”).

SBC's Voluntary Conditions already fully comply with the Commission's rules on line sharing and line splitting. As the Commission concluded, "SBC's new offerings create *additional* choices for competitive LECs. Nothing about our modification of the ownership restrictions in the Merger Conditions limits a competitive LEC's ability to obtain an unbundled local loop or subloop, including loops capable of providing xDSL services." *Modification Order* ¶ 29 (emphasis added). "The Combined Voice and Data Offering will provide carriers the ability to use the voice portion of the loop *just as they would any other voice loop*, while complementing their offering with the capability to provide the ADSL service made available by SBC's incumbent LECs." *Id.* ¶ 47 (emphasis added). The Commission further concluded that "SBC's proposal does not eliminate any options currently available to competitive LECs under our rules, including the right to obtain access to the subloop network element, to collocate in remote terminals (when space is available), and to obtain access to unbundled DSLAM capabilities in certain circumstances." *Id.* ¶ 35. And the Commission properly refused to use this limited adjudication to determine compliance with the Merger Conditions to create new rules regarding line splitting. The Commission emphasized that it is considering "arguments relating to the use of UNE-P to provide DSL service and line splitting in the *Local Competition and Line Sharing* proceedings in which we will be able to more fully evaluate the policy arguments and technical issues based on a fuller record." *Id.* ¶ 51. No commenter has offered any new grounds upon which the Commission could or should reach a different conclusion.

III. Commenters Provide No Support for the Argument that SBC Has Committed a *Per Se* Merger Violation

A few commenters agree with CompTel's claim that SBC committed a *per se* violation of the Merger Conditions by exceeding their scope and purpose. For example, ATG and Allegiance mimic CompTel's argument that the SBC ILECs were restricted not only by the express time

period of the transitional authorization but also by the “purpose” of that authorization. Allegiance Comments at 7-8; ATG Comments at 7; *cf.* Petition for Reconsideration of the Competitive Telecommunications Association at 8 (FCC filed Oct. 10, 2000) (“the limited exception to the requirements of the conditions must be interpreted as also being constrained by its *purpose*”).

The Commission considered and rejected this very argument and noted that CompTel “provided [no] evidence to show that SBC’s incumbent LECs improperly provided network planning [and engineering] services.” *Modification Order* ¶ 59. CompTel provided no evidence in its petition for reconsideration, and none of the commenters fills the breach. ATG provides no support for its claim, and Allegiance expressly concedes that it “does not have specific information.” Allegiance Comments at 8. There is, then, no grounds for reconsideration of this decision.

IV. The Commission Should Not Delay the Benefits of Advanced Services

Some commenters support CompTel’s request for a “transition period” during which SBC’s ILECs are prohibited from offering the Broadband Service. *See, e.g.*, Allegiance Comments at 6-7; Focal Comments at 5; IP Comments at 5; ATG Comments at 7-10. As noted, the Commission has fully considered and rejected this argument. The Commission reasonably concluded that such a transition period is “not necessary in light of SBC’s commitment to make available the Broadband Offering to all carriers (including its Advanced Services Affiliate) at the same time.” *Modification Order* ¶ 50.

Like CompTel, these commenters offer no new facts or arguments that cast doubt on the Commission’s conclusion. IP suggests that SBC has known “that the Pronto ADSL signals will harm central office based DSL signals when the[y] share the same binder group at the subloop”

but improperly denied this fact until after the *Modification Order* was released. IP Comments at 6. IP's suggestion that SBC sandbagged and delayed revealing problems with spectrum management is patently false. First, this potential issue was not raised or mentioned by CLECs in the Pronto collaborative sessions until October 24, 2000, which was well after the *Modification Order*. Second, because Pronto ADSL signals will be sharing binder groups with traditional copper-based xDSL copper on an extremely limited basis (only on loops that are in the yellow zone from 12,000-17,000 ft in length), the impact of this spectrum management issue cannot adequately be determined at this time. Indeed, because the potential spectrum management issues are highly speculative and will occur on a limited number of groups, they provide no basis for delaying the benefits Project Pronto will bring to customers that are beyond 17,500 ft. Finally, and in any event, regardless of how the DSL network is laid out in the future – whether it be through the Pronto network architecture or through a copper-based network architecture – there will be similar binder group and spectrum management issues. Indeed, the FCC charged a committee (the T1E1 committee) to look into this very issue and establish an industry standard for spectrum and binder group management. IP seems willing to accept the provision of xDSL service using traditional copper networks while these industry standards are being decided; there is no basis for treating Pronto any differently. On the contrary, Project Pronto will, as the Commission concluded, help fulfill the 1996 Act's goal of encouraging the deployment of advanced services. These benefits should not be put on hold while general questions of spectrum management – which apply to xDSL service over copper networks as well – are being considered.

ATG raises similarly meritless arguments. ATG suggests that SBC will not be able to introduce the Combined Voice and Data service in December because its trials have been

delayed. ATG Comments at 9. Contrary to ATG's suggestion, SBC will fully comply with its Combined Voice and Data commitments. SBC does not provide trials to test processes on every new product and service. Indeed, SBC has rolled out numerous wholesale products without conducting a joint customer trial. In the two trials that SBC has conducted this year involving advanced services – CO-based line sharing and the Broadband Service – SBC voluntarily provided the trials. SBC is under no obligation to offer trials regarding the Combined Voice and Data service. Moreover, the fact that a trial has not yet been completed for the Combined Voice and Data offering has no bearing on whether it will be available on December 8. In fact, SBC will comply with the *Modification Order* and deliver this product in accordance with its Voluntary Conditions.

ATG also relies on Advanced Fiber Communications' announcement of a new agreement to supply remote terminal cabinets to SBC under which one of the cabinets supplied does not have space for collocated equipment. *Id.* at 9-10. The cabinets supplied by Advanced Fiber Communications are designed to serve a special niche purpose; they are to be placed in low-density areas where SBC has a small serving area. CLECs such as ATG have shown no interest in serving these customers. In any event, ATG has ample opportunities under the Voluntary Commitments to provide service to these customers, even where cabinets are employed. ATG can take advantage of the Special Construction Arrangement process or use the Broadband Service.

Thus, these commenters have provided no support for a mandatory transition period. Rather, these commenters simply share CompTel's desire to inhibit SBC's ability to compete in the marketplace. They offer no evidence that SBC has violated its commitments, yet they would have the Commission presume that SBC is guilty of such a violation and place the burden on

SBC to prove its innocence during a “transition period.” The Commission, however, presumes that the parties will comply with their stated commitments. *See Memorandum Opinion and Order, Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3230-31, ¶ 148 (1999) (presuming that parties make representations to the Commission “in accordance with the Commission’s candor and truthfulness requirements”). And the Commission has ample power to enforce the Voluntary Conditions should a violation occur. *See Modification Order*, App. A, ¶ 10.

CONCLUSION

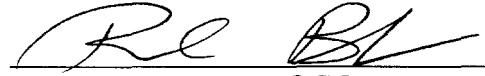
The commenters supporting CompTel's petition for reconsideration have, like CompTel, simply repeated arguments already considered and rejected by the Commission. Accordingly, for the foregoing reasons, it should be denied.

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November 9, 2000

CERTIFICATE OF SERVICE

This is to certify that on November 9, 2000, I provided true and correct copies of the Reply Comments of SBC Communications Inc. Opposing the Petition For Reconsideration of the Competitive Telecommunications Association by hand delivery (indicated by asterisk) or by first-class mail, postage prepaid, to the following:

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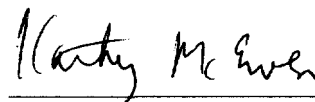
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